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No. 84-2008

Supreme Court, U.S.
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In The Supreme Court of the United States

OCTOBER TERM, 1984

READING COMPANY
AND
CENTRAL JERSEY INDUSTRIES, INC., PETITIONERS

v.

JOSEPHINE SCHWEITZER, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONER'S REPLY MEMORANDUM

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QUESTIONS PRESENTED

1. Whether a reorganization court has the power to deal with and provide for latent future asbestos-related toxic tort claims as part of a reorganization of a debtor corporation under Section 77 of the Bankruptcy Act?

2. Whether, assuming that a reorganization court has such authority, the court may bar such future claims, where the rail operations out of which such claims arose are, during the course of the reorganization, transferred to a solvent successor railroad?

DESIGNATION OF CORPORATE RELATIONSHIPS

The Designation of Corporate Relationships set forth in Petitioner's Petition for Certiorari (Pet. III) is incorporated herein by reference.

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By focusing on the *ratio decidendi* of the decision below the Respondents seek to depreciate the significance of these cases.

Respondents would have the Court believe, for example, that the Third Circuit found that the "reorganization plans and consummation orders . . . did not make provisions for such [the subject FELA] claims." (Brief in Op. 6-7). It is true that the Respondents in the District Courts and Court of Appeals strenuously argued for an interpretation of various specific provisions of the Reading and CNJ reorganization plans and consummation orders which would defeat Petitioners' defenses of discharge in bankruptcy. But the opinion of the Court of Appeals does not mention these issues, much less adjudicate them in favor of Respondents.

The Court of Appeals avoided the need to deal with these, or indeed any other, subsidiary issues by focusing exclusively on the broadest possible statutory construction question. There is no need to speculate as to the approach taken by the Court of Appeals, because the court clearly expressed its approach as follows:

> "The district courts in these cases were presented with the difficult question of whether plaintiffs, who allege that they were exposed to asbestos prior to their employer's reorganization and did not manifest any injury until after the relevant consummation dates, had 'claims' that were discharged in the reorganization proceedings. The courts concluded in the affirmative, necessarily relying for this conclusion on the determination that plaintiffs did have dischargeable 'claims' within the meaning of section 77. We shall now consider whether this determination was error." (App. 11a-12a).

Respondent may have preferred that the Court of Appeals decide these cases on a narrower ground, but the Court of Appeals expressly elected to reach and confine its decision to the broadest possible issue in these cases, i.e. whether "plaintiffs did have dischargeable 'claims' within the meaning of section 77."

For the reasons set forth in the Petition, the consequences of that decision raise important and troublesome questions of bankruptcy administration warranting further consideration by this Court.

Respectfully submitted,

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